



Tax Professionals: What Are Their Potential Liabilities?

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The accounting profession has been built around a set of core values such as honesty, integrity, objectivity, competence, independence, professional responsibility, confidentiality and service¹.

Therefore, accounting professionals comprising accountants, auditors, tax consultants, etc., have always been held to maintain a high level of ethical and professional standards. The reason for this being that the accounting profession has a key role in delivering public value, and in order to contribute to the public value, ethical conduct is seen as a key characteristic that the accounting profession must demonstrate².

That being said, the accounting profession has seen some high-profile cases over the past few decades. One of the most prominent cases was the Enron scandal which was seen as one of the largest, most complicated and notorious accounting scandals of all time³. The auditors of Enron were found to be guilty of charges relating to its role in the Enron scandal which ultimately resulted in their fall from grace⁴.

Closer to home, we are not without fault as we have seen some high-profile cases of our own which has brought light on the accounting profession. One of the most prominent cases is the 1MDB scandal which has seen key stakeholders of the company filing lawsuits to claim for damages against the former auditors of 1MDB⁵. Another case that comes to mind is the Serba Dinamik case in which the company has gone to court claiming that its former auditors did not properly carry out its statutory duties and were negligent⁶.

However, most of the major cases that have happened revolved around the auditing profession. In the tax profession, there have been cases such as *Perak Integrated Network Services Sdn Bhd & ORS v RA Tax Services Sdn Bhd*⁷, *Kerajaan Malaysia v K-Asia Holdings Sdn Bhd & Anor*⁸ and *Lim Kar Bee v Duofortis Properties (M) Sdn Bhd*⁹.

In these cases, the tax consultants had allegedly been negligent in performing their duties for the taxpayers or in providing advice with intention to avoid payment of tax.

1 [*CPAFMA, Professional Guidelines: Core Values of a Firm Manager*](#)

2 [*ACCA, Survey Report: The Accountancy Profession's Role in Creating Public Value in August 2011*](#)

3 [*Corporate Finance Institute, The Fallout of Arthur Andersen and Enron on the Legal Landscape of American Accounting*](#)

4 [*HG.org Legal Resources, Enron Scandal: A Series of Financial Wrongdoings That Led to the Collapse of Enron Corporation*](#)

5 [*Malay Mail, Report: 1MDB, MOF Inc, Malaysia sues audit firm KPMG's partners to claim US\\$5.64b on 9 July 2021*](#)

6 [*Free Malaysia Today, Serba Dinamik v KPMG latest in string of auditing tussles on 4 September 2021*](#)

7 [*Perak Integrated Network Services Sdn Bhd & ORS v RA Tax Services Sdn Bhd \[2017\] MLJU 186*](#)

8 [*Kerajaan Malaysia v K-Asia Holdings Sdn Bhd & Anor \[2021\] MLJU 2097*](#)

9 [*Lim Kar Bee v Duofortis Properties \(M\) Sdn Bhd, Civil Appeal No.02-501-91 \(Kuala Lumpur\) \(1992\) 1MSTC 3,288 Supreme Court of Malaysia*](#)

Tax Professionals and Their Roles

Firstly, who is a tax agent? A tax agent is defined under Section 153(3) of the Income Tax Act 1967 as any professional accountant or person approved by the Minister. Although not specifically provided for under the Real Property Gains Tax Act 1976, Stamp Act 1949, Sales Tax Act 2018, Service Tax Act 2018 or Customs Act 1967, a taxpayer may appoint a tax professional to assist and / or advise them on their tax matters which may fall under any of the legislation.

The role of a tax professional is crucial in the country's tax collection efforts. A report by the Forum on Tax Administration acknowledged the crucial role that intermediaries, such as accountants or tax professionals, play in ensuring tax systems function properly¹⁰. Therefore, the role of a tax professional is two-fold.

On one hand, a tax professional who has been engaged by a taxpayer will assist the taxpayer to minimise its taxes that are due and payable from the profits of its business. The crucial factor in this process is that tax professionals will plan the taxpayer's tax affairs in accordance with the prevailing tax laws and legislation, including but not limited to leveraging on available tax incentives, double taxation agreements, available tax deduction, etc., to minimise its taxes.

On the other hand, a tax professional who is licensed by the Minister of Finance under Section 153(3) of the Income Tax Act 1967 has an implied duty or responsibility to play a role in improving the tax compliance rates of taxpayers across the country.

In this sense, tax professionals have a duty to provide awareness and education to their clients so that they are aware of the tax responsibilities. When advised correctly, the role of tax professionals may result in an improvement in tax returns submitted which would ultimately lead to an increase in the tax compliance rates of the country¹¹.

Given these two hats the tax professional is wearing, which master is the tax professional serving?

To ensure that tax professionals as advisors to taxpayers are providing tax advice and consultation which are in accordance with the prevailing tax laws, the various legislation have included certain fine provisions to penalise tax professionals that assist or collude with taxpayers to illegally evade tax. These fines are intended to discourage tax professionals from assisting or planning any tax evasion or illegal tax planning activities. We will look at the various fines later in the article.

¹⁰ International Federation of Accountants, *The Role of Professional Accountants in the Proper Functioning of Taxation Systems* on 30 September 2014

¹¹ Mohd Rizal Palil, *Tax Knowledge and Tax Compliance Determinants in Self-Assessment System in Malaysia* in 2010

Professional Code of Ethics

Tax professionals should carry out their duty to their clients professionally and with integrity. What constitutes a professional code of ethics? As a guideline, we look at the various accounting bodies' code of ethics and conducts and the common principles that they share. For this purpose, we have looked at the code of ethics and conduct of the CPA Australia which is based on the Accounting Professional & Ethical Standards Board, the Association of Chartered Certified Accountants¹³, and the Malaysia Institute of Accountants¹⁴ which share the following core principles:



Integrity

To be straightforward and honest in all professional and business relationships



Objectivity

To never compromise professional or business judgements because of bias, conflict of interest or undue influence of others.



Professional Competence and Due Care

To attain and maintain professional knowledge and skill at the level required to ensure that the client or employing organisation receives competent Professional Activities, based on current technical and professional standards and relevant legislation; and act diligently and in accordance with applicable technical and professional standards.



Confidentiality

To respect the confidentiality of information acquired as a result of professional and business relationships



Professional Behavior

To comply with relevant laws and regulations and avoid any conduct that the Member knows or should know might discredit the profession

¹² Accounting Professional & Ethical Standards Board, *APES 110 Code of Ethics for Professional Accountants* issued on November 2018

¹³ ACCA, *Code of Ethics and Conduct* issued on 1 January 2021

¹⁴ Malaysian Institute of Accountants, *By-Laws (On Professional Ethics, Conduct and Practice) of the Malaysian Institute of Accountants* issued on June 2019

Professional Code of Ethics (cont'd)

The five (5) core principles shared above may serve as a guide on how tax professionals should act when carrying out their duties to their client and should ensure good tax practices while maintaining a high level of tax compliance. It will also ensure that tax professionals will at all times conduct themselves ethically, fairly and professionally to maintain the balance between the best interests of their clients while providing advice that is in line with the prevailing tax laws.

That being said, the principles above are not legally binding as they are not written in any law that binds tax professionals. As such, it is reiterated that they are merely a guide for tax professionals to conduct themselves in a professional manner in their dealings with their clients.



Fine Provisions under the Respective Legislations

A tax professional in carrying out his duties should be forever conscious of the fact that he / she shall carry out his / her duties in a responsible manner as to always remain within the confines of the law. Failing which, they may be liable to fines under the respective legislations as listed in the table on the following page.

Fine Provisions under the Respective Legislations (cont'd)

| Legislation | Offence | Fine |
|---|---|---|
| INCOME TAX ACT 1967 | | |
| Section 114(1A) of the Income Tax Act 1967 ("ITA") | Any person who assists in, or advises with respect to, the preparation of any return where the result results in an understatement of the liability for tax of another person shall, unless he satisfies the court that the assistance or advise was given with reasonable care. | <p>On conviction-</p> <ul style="list-style-type: none"> • Liable to a fine of between RM2,000 to RM20,000; or • Imprisonment for a term not exceeding three (3) years; or • Both. |
| REAL PROPERTY GAINS TAX ACT 1967 | | |
| Section 31(1) of the Real Property Gains Tax Act 1976 ("RPGTA") | <p>Any person who wilfully and with intent to evade or assists any other person to evade tax-</p> <ol style="list-style-type: none"> Omits from a return under the RPGTA any particulars required under the RPGTA relating to any disposal of a chargeable asset; or Makes a false statement or entry in a return made under the RPGTA; or Gives a false answer (orally or in writing) to a question asked or request for information made under the RPGTA; or Falsifies or authorizes the preparation or maintenance of any false books of account or other false records; or Falsifies or authorizes the falsification of any books of account or other records; or Produces or allows or authorizes the production of, books of accounts which he knows to be false; or Makes use of authorizes the use of any fraud, art of contrivance; or Makes in respect of the tax a fraudulent claim for repayment. | <p>On conviction-</p> <ul style="list-style-type: none"> • Liable to a fine of not exceeding RM10,000; or • Imprisonment for a term not exceeding three (3) years; or • Both. <p>And shall pay a special penalty of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence had not been detected.</p> |

Fine Provisions under the Respective Legislations (cont'd)

| Legislation | Offence | Fine |
|---|---|---|
| STAMP ACT 1949 | | |
| Section 61 of the Stamp Act 1949 ("SA") | <p>Any person who with intent to evade the payment of stamp duty-</p> <ul style="list-style-type: none"> a) Executes any instrument in which all the facts and circumstances are not truly and fully set forth as required under the SA; or b) Being employed or concerned in or about the preparation of any instrument neglects or omits fully and truly to set forth therein all the said facts and circumstances. | Liable to a fine not exceeding RM2,500. |
| Section 74 of the SA | Any person who practices or is concerned in any fraudulent act, contrivance or device not specially provided for by law, with intent to defraud the government of any duty. | Liable to a fine of RM5,000. |

Fine Provisions under the Respective Legislations (cont'd)

| Legislation | Offence | Fine |
|---|--|---|
| SALES TAX ACT 2018 | | |
| Section 86(1) of the Sales Tax Act 2018 | <p>Any person who, with intent to evade or to assist any other person to evade sales tax-</p> <ul style="list-style-type: none"> a) Omits from a return any information in relation to any matter affecting the amount of sales tax chargeable by him or other person; b) Makes any false statement or entry in any return, claim or application; c) Gives any false answer, whether in writing or otherwise, to any question asked or request for information made under the Sales Tax Act 2018; d) Prepares or maintains, or authorizes the preparation or maintenance of, any false book of accounts, false invoices or other false records, or falsifies or authorizes the falsification of any book of accounts, invoices or records; or e) Makes, uses or authorizes the use of any fraud, artifice or contrivance. | <p>On conviction of first offence-</p> <ul style="list-style-type: none"> • Liable to a fine of between ten (10) times and twenty (20) times the amount of sales tax; or • Imprisonment for a term not exceeding five (5) years; or • Both. <p>On conviction of second or subsequent offences-</p> <ul style="list-style-type: none"> • Liable to a fine of between twenty (20) times and forty (40) times the amount of sales tax; or • Imprisonment for a term not exceeding seven (7) years; or • Both. <p>If the amount of sales tax cannot be ascertained, the person will be-</p> <ul style="list-style-type: none"> • Liable to a fine of between RM50,000 and RM500,000; or • Imprisonment for a term not exceeding seven (7) years; or • Both |
| Section 86(4) of the Sales Tax Act 2018 | Any person who assists in, or advises with respect to, the preparation of any return where the return results in an understatement of the liability for sales tax of another person, unless he satisfies the court that the assistance or advise was given with reasonable care. | <p>On conviction-</p> <ul style="list-style-type: none"> • Liable to a fine of between RM2,000 and RM20,000; or • Imprisonment for a term not exceeding three (3) years; or • Both. |
| Section 87 of the Sales Tax Act 2018 | Without any prejudice to any other liabilities incurred under the Sales Tax Act 2018, any person who gives any incorrect information in relation to any matter affecting his own liability to sales tax or the liability of any other person to sales tax. | <p>On conviction-</p> <ul style="list-style-type: none"> • Liable to a fine not exceeding RM50,000; • Imprisonment for a term not exceeding three (3) years; or • Both. |

Fine Provisions under the Respective Legislations (cont'd)

| Legislation | Offence | Fine |
|---|---|---|
| SERVICE TAX ACT 2018 | | |
| Section 71(1) of the Service Tax Act 2018 | <p>Any person who, with intent to evade or assist any other person to evade service tax-</p> <ol style="list-style-type: none"> Omits from a return any information in relation to any matter affecting the amount of service tax chargeable by him or other person; Makes a false statement or entry in any return, declaration, claim or application; Gives any false answer, whether in writing or otherwise, to any question asked or request for information made under the Service Tax Act 2018; Prepares or maintains, or authorizes the preparation or maintenance of, any false book of accounts, false invoices or other false records, or falsifies or authorizes the falsification of any book of accounts, invoices or records; or Makes, uses or authorizes the use of any fraud, artifice or contrivance. | <p>On conviction of first offence-</p> <ul style="list-style-type: none"> • Liable to a fine of between ten (10) times and twenty (20) times the amount of service tax; or • Imprisonment for a term not exceeding five (5) years; or • Both. <p>On conviction of second or subsequent offences-</p> <ul style="list-style-type: none"> • Liable to a fine of between twenty (20) times and forty (40) times the amount of service tax; or • Imprisonment for a term not exceeding seven (7) years; or • Both. <p>If the amount of service tax cannot be ascertained, the person will be-</p> <ul style="list-style-type: none"> • Liable to a fine of between RM50,000 and RM500,000; or • Imprisonment for a term not exceeding seven (7) years; or • Both |
| Section 71(4) of the Service Tax Act 2018 | Any person who assists in, or advises with respect to, the preparation of any return or declaration, as the case may be, which the return results in an understatement of the liability for service tax of another person, unless he satisfies the court that the assistance or advice was given with reasonable care. | <p>On conviction-</p> <ul style="list-style-type: none"> • Liable to a fine of between RM2,000 and RM20,000; or • Imprisonment for a term not exceeding three (3) years; or • Both. |
| Section 72 of the Service Tax Act 2018 | Without any prejudice to any other liabilities incurred under the Service Tax Act 2018, any person who gives any incorrect information in relation to any matter affecting his own liability to service tax or the liability of any other person to service tax. | <p>On conviction-</p> <ul style="list-style-type: none"> • Liable to a fine of not exceeding RM50,000; • Imprisonment for a term not exceeding three (3) years; or • Both. |

Fine Provisions under the Respective Legislations (cont'd)

| Legislation | Offence | Fine |
|--|---|--|
| CUSTOMS ACT 1967 | | |
| Section 133(1) of the Customs Act 1967 | <p>Whoever-</p> <ol style="list-style-type: none"> Makes, orally or in writing, or signs any declaration, certification or other document required by the Customs Act 1967 which is untrue or incorrect in any particular; Makes, orally or in writing, or signs any declaration or document, made for consideration of any officer of customs on any application presented to him, which is untrue or incorrect in any particular; Counterfeits or causes to be counterfeited or falsifies or causes to be falsified any document which is or may be required under the Customs Act 1967 or used in the transaction of any business or matter relating to customs or uses or causes to be used or in any way assists in the use of such counterfeited or falsified document; Fraudulently alters any document, or counterfeits the seal, signature, initials or other mark of, or used by, any officer of customs for the verification of any such document or for the security of any goods or any other purpose in the conduct of business relating to customs; Being required by the Customs Act 1967 to make a declaration of dutiable goods imported or exported, fails to make such declaration as required; Fails or refuses to produce to a proper officer of customs any document required to be produced on demand; or Being so required under provisional declaration fails to make a declaration in the prescribed form within the stipulated period thereunder, of goods imported or exported. | <p>On conviction-</p> <ul style="list-style-type: none"> • Liable to a fine not exceeding RM500,000; • Imprisonment for a term not exceeding seven (7) years; or • Both |

Summary

It is generally perceived that the imposition of fines will act as a deterrent for people to commit any wrongdoings.

Studies have shown that imposing an adequate fine, which is not excessive, will act as a deterrent against people from committing any wrongdoings.

Although there are the various penalties in place, tax professionals should - as the name suggests - be professional and responsible in carrying out their duties while keeping in mind their integral role in ensuring that the government continues to collect the taxes that are due while also assisting taxpayers to declare and contribute the appropriate amount of taxes.

Therefore, tax professionals should always abide by the tax agent's code of ethics which revolves around the core values of integrity, competency and professionalism.

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